

STATE OF MICHIGAN
COURT OF APPEALS

STEUER & CANVASSER CONSTRUCTION
COMPANY,

UNPUBLISHED
June 11, 2002

Plaintiff-Appellant,

v

ROLAND COLLINS and VENERA COLLINS,

No. 230424
Oakland Circuit Court
LC No. 00-022801-CK

Defendants-Appellees.

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendants summary disposition pursuant to MCR 2.116(C)(7) (claim barred by res judicata). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants filed a claim against plaintiff in September 1999, alleging claims that plaintiff, a builder, violated the Michigan Consumer Protection Act, MCL 445.901 *et seq.*, committed fraud/false pretenses and breached the parties' purchase agreement. The parties had negotiated an agreement by which plaintiff would construct two homes for defendants. Defendants gave plaintiff earnest money checks totaling \$20,000. The parties' relationship broke down, and plaintiff never built defendants' homes. It kept the \$20,000. Defendants brought an action to recover their earnest money.

In April 19, 2000, plaintiff filed a motion to amend its answer to state a counterclaim for damages based on claims of breach of contract and quantum meruit/unjust enrichment. Plaintiff then filed its complaint in this case on May 1, 2000. Plaintiff alleged that defendants breached the parties' contract by failing to obtain a mortgage or to notify plaintiff of this failure. Its claim of quantum meruit/unjust enrichment was based on the fact that defendants retained the drawings and designs prepared by plaintiff for use by the builder who ultimately built defendants' homes.

On May 3, 2000, defendants' action proceeded to case evaluation. The evaluation awarded defendants \$10,000 to be paid by plaintiff. The parties accepted the evaluation. On May 4, 2000, the trial court denied plaintiff's motion for leave to file an amended answer to assert a counterclaim. On July 14, 2000, the parties entered into a stipulated order dismissing defendants' complaint with prejudice.

In this action, defendants moved for summary disposition, arguing that this action is barred by res judicata. The trial court agreed, finding that the prior action was settled on the merits, the issues raised in this action were or could have been resolved in the prior action and both actions involve the same parties or their privies.

Plaintiff appeals as of right, arguing that the trial court erred in determining that its complaint is barred by res judicata. We agree.

A trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(7) is reviewed de novo to determine whether the moving party was entitled to judgment as a matter of law. *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001). The question whether a claim is barred by res judicata is a question of law that is reviewed de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

A subsequent action between the same parties is barred by the doctrine of res judicata when the evidence or essential facts are identical. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). It applies "when (1) the prior action was decided on the merits, (2) the decree in the prior action was decided on the merits, (3) both actions involved the same parties or their privies, and (4) the matter in the second case was or could have been resolved in the first." *Pierson Sand & Gravel, supra*. The doctrine is applied broadly. *Dart, supra*.

An acceptance of a case evaluation is like a consent judgment. *Hoover Corners, Inc v Conklin*, 230 Mich App 567, 574; 584 NW2d 385 (1998). A judgment or dismissal entered after acceptance of a case evaluation is deemed to dispose of all claims in the action. MCR 2.403(M)(1).

A party may move to amend an answer to state a counterclaim. MCR 2.203(E). If the court denies the motion, "the litigation of that claim in another action is not precluded unless the court specifies otherwise." In such circumstances, the moving party is permitted to maintain a counterclaim in a separate independent action to the extent allowed by the rules of collateral estoppel and res judicata. *Salem Industries, Inc v Mooney Process Equip Co*, 175 Mich App 213, 216; 437 NW2d 641 (1988).

The question here is whether plaintiff's claims are identical to those raised by defendants in the prior action. "The test for determining whether two claims are identical for res judicata purposes is whether the same facts or evidence are essential to the maintenance of the two claims." *Huggett v Dep't of Natural Resources*, 232 Mich App 188, 197-198; 590 NW2d 747 (1998). If the two actions are based on different facts or different facts would be required to sustain the two actions, res judicata does not bar the subsequent action. *VanDeventer v Michigan Nat'l Bank*, 172 Mich App 456, 464; 432 NW2d 338 (1988), citing *York v Wayne Co Sheriff*, 157 Mich App 417, 423; 403 NW2d 152 (1987).

A comparison of the claims raised in this action and the prior action reveals that they are not based on the same facts. Defendants' claims are based on plaintiff's alleged representations and misrepresentations to defendants regarding the purchase agreement and plaintiff's failure to comply with the terms of that agreement. Plaintiff's claims in this case are based on its allegations regarding defendants' failure to comply with the mortgage requirement and

defendants' use, through another builder, of the drawings and designs prepared by plaintiff. Although some facts are common, each claim depends on unique facts and the same facts will not sustain both causes of action. Therefore, plaintiff's present action is not barred by res judicata.

We reject defendants' alternative statute of frauds argument. Where defendants argued in the prior action that the parties entered into "a valid enforceable Purchase Agreement," they are estopped from now asserting that the agreement violated the statute of frauds. *Hall v McRea Corp*, 238 Mich App 361, 366; 605 NW2d 354 (1999).

Reversed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff